IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.726 OF 2002

Talsons Real Estate Pvt.Ltd.)
A Pvt. Ltd. Company,)
registered under the provisions)
of the Indian Companies Act)
1956 having its registered)
Office at :- 13, Wilson Garden,)
Motilal Taleu Marg,)
Pune 411 001)
Through)
Shri Chandulal Motilal Talera,)
Residing at :- 12 Koregaon Park,)
Pune 411 001.)..Petitioner.

V/s

)
1. State of Maharashtra)
)
2. The Land Acquisition)
Officer No.14, Pune.)
)
3. Maharashtra State Electricity Board)
Through Shri Kadam,)
Supdt. Engineer,)
[Construction Department],)
Maharashtra State Electricity Board,)
Rasta Peth, Pune.)..Respondents

Mr. Girish S. Godbole for the petitioner.

Mr. V.S. Gokhale, AGP for respondent Nos. 1 and 2.

Ms. A.R.S. Baxi for respondent No.3.

CORAM: R.M.S. KHANDEPARKAR &
V. M. KANADE, JJ.

DATE: 24th August, 2005.

ORAL JUDGMENT: (Per R.M.S. KHANDEPARKAR, J.)

1. Heard. Perused the records.

2. The Petitioner challenges the acquisition proceedings which were initiated by issuing the notice under section 4 on 01/04/1997, declaration under section 6 on 29/04/1988 and passing of an award dated 14/06/2000 in Case No.LAQ/48 in relation to the land bearing Survey No.23/2/1 situated at village Kondhwa Budruk, Taluka Haveli, District Pune. The challenge is on the ground of failure on the part of the respondents to afford personal hearing to the petitioner under section 5-A.

3. The undisputed fact in the matter is that the Petitioner is the owner of the suit property bearing Survey No.23/2/1 situated at Kondhwa Budruk, Taluka Haveli, District Pune and the same has been acquired pursuant to the impugned award dated 14/06/2000. The acquisition has been for the purpose of installation of 132 K.B. Sub Station. It is the case of the petitioner that though petitioner's name has been duly registered in the revenue records in relation to the suit property, at no point of time, in the course of acquisition of the suit land, the petitioner was either informed or otherwise heard in the matter and

it was not given an opportunity to putforth its say, including the contention that the respondents can avail another land better than the one which is sought to be acquired for the purpose of installation of Electricity Sub Station. It is further case of the petitioner that, undisputedly, no personal notice in terms of provisions comprised under section 45 was served upon the petitioner consequent to the issuance of notification under section 4 on 01/04/1997. It is its further case that in spite of the fact that the respondents had decided to issue notice and afford an opportunity of personal hearing to the petitioner and the same fact being revealed from the affidavit filed on behalf of the respondents themselves, the respondents have not been able to disclose due compliance of the provisions of section 45 in relation to issuance of notice in relation to the acquisition proceedings pertaining to the suit property. It is further case of the petitioner that issuance of such notice is mandatory before conclusion of the inquiry under section 5-A and failure thereof would vitiate the entire land acquisition proceedings.

4. The learned advocate appearing for the petitioner has sought to rely upon the decision of the Apex Court in Farid Ahmed Abdul Samad and another vs. The

Municipal Corporation of the City of Ahmedabad and another reported in **AIR 1976 Supreme Court 2095** and in Tej Kaur and others vs. State of Punjab and others reported in **AIR 2003 Supreme Court 2414** as well as the decision of the Division Bench of this Court in Khushalrao Tulshiramji Pandao and others vs. State of Maharashtra and others reported in **2001(4) Mh.L.J. 510**, while submitting that failure on the part of the respondents to serve personal notice to the petitioner before conclusion of the inquiry under section 5-A has vitiated the entire proceedings and, on that count itself, the land acquisition proceedings in relation to the suit property need to be quashed.

5. In the course of the arguments, the learned Advocate for the petitioner also requested for leave to amend the petition, as the original prayer was only in relation to the award in question and, according to him, the Petitioner needs to incorporate the relief in relation to the notification under section 4 as well as declaration under section 6. It was made clear to the learned advocate of the petitioner pursuant to the said request that irrespective of the fact that the prayer in the petition is restricted to the challenge to the award, tenor of the petition admittedly discloses challenge to the entire land acquisition

proceedings itself and, being so, merely because the prayer does not include relief of setting aside of the notification issued under section 4 and declaration under section 6, it would not come in the way of the petitioner in case the petitioner is able to satisfy the Court on merits as the court is amply empowered to mould the relief in a justifiable case.

6. Upon hearing the learned advocate for parties and on perusal of the record, the first point which arises for consideration is as to whether personal notice to the persons interested within the meaning of the said expression under section 45 of the said Act would be mandatory, consequent to the issuance of notification under section 4 and before conclusion of the inquiry under section 5-A of the said Act?

7. Chapter II of the said Act deals with the subject of acquisition of the land. Thereunder, section 4 deals with subject of publication of preliminary notification and powers of the officers thereupon. Sub-section (1) of section 4 speaks of powers to issue a notification to be published in the Official Gazette and in two daily newspapers having circulation in the locality from which the land is sought to be acquired and at least one of the newspapers be in the regional

language and further the Collector being required to cause public notice of the substance of notification to be given at convenient places in the concerned locality. In terms of sub-section (2) of section 4, on publication of such notification, the authorized officers are empowered to enter the land which is subjected to acquisition for the purpose of survey and to do needful in relation to the acquisition proceedings. Proviso thereto clarifies that no person shall enter into any building or enclosure without previous notice to the occupier thereof. Section 5 deals with the obligation of the authority to indemnify persons who suffer damage on account of the acts on the part of the authority in carrying out survey and other acts in relation to the acquisition of the land pursuant to notification being issued under section 4.

8. Section 5-A deals with subject of hearing objections filed by the persons interested. Sub-section (1) thereof provides that any person interested in any land which has been notified under section 4, sub-section (1), as being needed or likely to be needed for a public purpose or for a company may, within thirty days from the date of the publication of the notification, object to the

acquisition of the land or of any land in the locality, as the case may be. This provision, therefore, entitles the person interested in the land which has been the subject matter of the notification under section 4 to file their objections within thirty days from the date of publication of notification. Needless to say that the period of thirty days will have to be counted from the last publication of the notification under section 4.

9. Sub-section 2 of section 5-A provides that every objection in sub-section (1) shall be made to the Collector in writing and the Collector shall give the objector an opportunity of being heard in person or by any person authorized by him in that behalf or by the pleader and shall, after hearing all such objections and after making such further enquiry, if any, as he thinks necessary either make a report in respect of the land which has been notified under section 4, sub-section 4(1), or make different reports in respect of different parcels of such land, to the appropriate Government, containing his recommendations on the objections, together with the record of the proceedings held by him, for the decision of that Government and the decision of the appropriate Government on objections shall be final. This

provision, therefore, apparently discloses that the Collector is duty bound to hear the person who has filed the objections to the notification under section 4, by exercising the right guaranteed to such person under the provision of law comprised in sub-section (1) of section 5-A. The expression 'the Collector shall give the objector an opportunity of being heard' apparently discloses that the obligation which is cast upon the Collector to grant a hearing is restricted to the objector and the objector is the one who files objections in terms of provisions comprised under sub-section (1) of section 5-A. In other words, inquiry with the opportunity of being personally heard in the matter under section 5-A is in relation to the persons who have exercised their right of filing objections under section 5-A(1) and not to each and every person who may otherwise like to object the acquisition proceedings but fails to object the same in accordance with the provisions prescribed under section 5-A(1) of the said Act.

10. The learned advocate appearing for the petitioner, however, submitted that unless such personal notice is served upon the persons interested or known to be interested in the land, there would be no opportunity to such persons to object to the

acquisition proceedings or to bring it to the notice of the Collector that there could be another land better suited for the purpose for which the acquisition proceedings are sought to be initiated. Undoubtedly, the provisions of law in relation to the decision as regards the requirement of a particular land for the purpose for which proceedings may be initiated is left to the discretion of the Government and it has been clarified that such decision shall be final. Judicial pronouncements in that regard also lay down the law that it is not for the courts to dwell into decision of the Government regarding requirement of a particular land for the purpose for which it is sought to be acquired, unless the person challenging the same is able to show malafide on the part of the Government in choosing the particular land or total arbitrariness in the decision making process in relation to the choice of the land. Merely because the interested person looses the opportunity to point out another land which could be, according to such person, better suited for the purpose for which the land is sought to be acquired, cannot be held to result in vitiating the entire land acquisition proceedings. Mere absence of an opportunity to such a person, more particularly in view of the provisions of law which does not contemplate any such mandatory

requirement of giving such personal notice to such person, cannot result in vitiating the land acquisition process itself. It is well settled law that authorities are expected to perform their obligations or duties under any statute in accordance with the procedure prescribed under that statute and not otherwise. Once the statutory provision does not provide for a specific personal notice to the person interested in relation to the notification issued under section 4, and, on the contrary, it specifically provides for opportunity of being personally heard only to those who have filed their objections in writing on publication of notification under section 4 of the said Act, the contention on behalf of the petitioner that on account of failure to issue such notice to the petitioner, therefore, vitiate the entire proceedings, cannot be accepted.

11. None of the decisions sought to be relied upon by the learned advocate for the petitioner are of any help to the petitioner to convince us about requirement of such notice. The Apex court in the case of Farid Ahmed (supra) had held that on account of failure on the part of the Commissioner to issue notices for personal hearing, the mandatory provision under section 5-A of the said Act was not complied

with. However, therein, the persons interested, not only filed the objections pursuant to issuance of notification under section 4, but had specifically requested for personal hearing with regard to their objections. Irrespective of the fact whether such request is made or not, undoubtedly, it would be the obligation of the Collector to issue notice for personal hearing to the objector, once such objector has filed objections in answer to the Notification under section 4, but no such obligation is cast upon the Collector in case of the persons who do not object to the acquisition by filing written objections within the time specified under section 5-A(1) of the said Act.

12. In Tej Kaur's case (supra), the Apex Court has ruled that the facts and circumstances of the said case clearly disclosed that the objections raised by the parties therein were considered and partly allowed by the Collector but the same thing was done without affording an opportunity of personal hearing to the parties. Besides, there were laches on the part of the parties in approaching the Court and, therefore, claim of the petitioners therein was rejected. However, at the same time, it was also held by the Apex Court that it is true that section 5-A inquiry is

an important stage in the acquisition proceedings and the person who is aware of section 4 notification can raise objection to the effect that his property is not required for acquisition and he has also an opportunity to raise the contention that his property is not required for any public purpose and it is also true that the objector also be given a reasonable opportunity of being heard and any violation of the procedure prescribed under Section 5-A would seriously prejudice the rights of the owner of the property whose land is sought to be acquired. Undoubtedly, therefore, the Apex court has observed that pursuant to the issuance of notification under section 4, a person interested can certainly object to the acquisition and when such objections are raised, he has to be given an opportunity of being personally heard in view of the provisions under section 5-A of the said Act. That does not lead to conclusion that even a person who has not filed objections is necessarily to be given such opportunity of personal hearing in the matter nor it leads to conclusion that even though such objections were not filed, such a person should be informed personally about the notification having been issued under section 4 in relation to his land.

13. Similarly, Division Bench of this Court in Khushalrao Tulshiramaji's case (supra), observed that the provisions comprised under section 5-A(2) clearly indicate that it is obligatory on the part of the Collector or the Land Acquisition Officer to give the objector an opportunity of being heard and it is only after hearing all such objections and after making such further inquiry, if any, as the Collector thinks necessary, that he can make a report. The Division Bench also observed that the observance of procedure laid down by the statute before depriving a person of his property is necessary to generate the feeling that the rule of law prevails in this country and when a procedure is prescribed by the Legislature, it is not for the court to substitute a different one according to its notion of justice. Evidently, the decision fortifies the view that we are taking in the matter. Neither section 4 nor section 5-A contemplates any notice to each and every person interested but it only speaks of notice to the objector. In other words, notice will have to be given to every person who files objections to the acquisition proceedings in terms of provisions comprised under section 5-A(1) of the said Act and not otherwise.

14. The contention that even though provisions of sections 4 or 5-A do not contemplate issuance of personal notice, bearing in mind that section 45 specifically provides for mode of service, the same was required to be complied with and further that once the respondents had decided to issue such notice, they could not have adopted the procedure different from the one prescribed under section 45, also do not appeal to our mind. As regards Section 45 of the said Act, undoubtedly, it prescribes procedure to be followed in relation to service of notice. However, it is only in cases where a notice is required to be issued and not otherwise. The provisions of section 45 will not be attracted in cases where there is no obligation cast upon the authorities to issue notice to a person interested. Once it is clear that neither section 4 nor section 5-A contemplates any notice to the persons interested other than the objectors for the purpose of conducting inquiry under section 5-A, the question of applicability of section 45 in petitioner's case does not arise as, admittedly, it had not filed any objection to the acquisition proceedings consequent to the issuance of notification under section 4.

15. As regards the contention that the affidavit-in-reply on behalf of the respondents disclose that the respondents, in fact, had decided to issue notices to all the persons interested and, in fact, had proceeded to site to serve such notices but did not comply with the provisions of section 45 vis-a-vis the petitioner is concerned, it has to be noted that merely because the authority chooses to adopt a procedure either contrary to or the one not in consonance with the provisions of law merely by way of abundant caution, but in addition to the prescribed procedure, then it will not create any right in favour of the petitioner to insist for compliance of provisions of section 45 when the relevant statute itself does not contemplate such obligation on the part of the respondents to issue such notice nor it creates a right in favour of the petitioner for insistence of such notice to him. Merely because the respondents thought it appropriate to issue such notices before conclusion of 5-A inquiry and, in the process, did not serve a notice on the petitioner that would not amount to violation of the provisions of Section 45 and, for that matter, any other provision of the said Act.

16. For the reasons stated above, therefore, we do not find any justification for interference in the matter. No case is made out for interference and, therefore, the Petition fails and is dismissed. Rule is discharged with no order as to costs. Interim relief stands vacated.

17. At this stage, the learned advocate requests for continuation of the status quo which is objected to by the respondents. However, we are inclined to order maintainance of status quo for a period of 12 weeks from today.

(R.M.S. KHANDEPARKAR, J.)

(V. M. KANADE, J.)